

No. 12619

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United States  
Court of Appeals  
for the Ninth Circuit.

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FLOYD J. HARKNESS,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Petition to Review a Decision of the Tax Court  
of the United States

FILED

OCT 24 1950

PAUL P. O'BRIEN,  
CLERK



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

For Petitioner:

PHILIP S. EHRLICH, ESQ.,

R. J. HECHT, ESQ.

LeROY H. GUNTHER, ESQ.,

ALBERT A. AXELROD, ESQ.,

For Respondent:

T. M. MATHER, ESQ.,

R. C. WHITLEY, ESQ.

The Tax Court of the United States

FLOYD J. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Office of Internal Revenue Agent in Charge, San Francisco Division, IRA :90-D-DMR) dated August 21, 1947, and as a basis of his proceeding, alleges as follows:

1. The petitioner is an individual with his residence at 3767 Huntington Boulevard, in the City of Fresno, State of California. The return for the period here involved was filed with the Collector for the First District of California.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the Petitioner on August 21, 1947.

3. The taxes in controversy are income and victory taxes for the calendar year 1943, in the amount of \$65,367.27.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The refusal of the respondent to recognize



that the petitioner and his wife, Molly A. Harkness, and their children, Floyd James Harkness, Jr. and Harriet Harkness Colgate, were copartners transacting business under the firm name and style of United Packing Co.;

(b) The determination by the respondent that the said Floyd James Harkness, Jr. and Harriet Harkness Colgate contributed no capital to said partnership known as United Packing Co., originating with themselves;

(c) The determination by the respondent that the said Floyd James Harkness, Jr. and Harriet Harkness Colgate rendered no services to the business of the partnership known as United Packing Co.;

(d) The determination by the respondent that the said Floyd James Harkness, Jr. and Harriet Harkness Colgate did not acquire valid partnership interests in the said United Packing Co.;

(e) The re-allocation of the profits of the said partnership known as United Packing Co. by the respondent to the petitioner and his wife, Molly A. Harkness, on a community property basis, thus increasing petitioner's taxable income by \$71,770.50.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) On December 31, 1942, petitioner, Molly A. Harkness, Floyd James Harkness, Jr. and Harriet Harkness Colgate entered into written Articles of Copartnership, under and by virtue of the terms of which they agreed, among other things, to become copartners in the business of growing, packing, ship-

ping and distributing fresh fruits and vegetables in the State of California under the firm name and style of United Packing Co., commencing January 1, 1943, and continuing until the partners should dissolve the partnership or until the partnership should be dissolved as provided in said partnership agreement. A copy of said Articles of Copartnership is attached hereto and marked Exhibit "B" and made a part hereof.

(b) Petitioner and Molly A. Harkness are husband and wife, and Floyd James Harkness, Jr. and Harriet Harkness Colgate are their children.

(c) The partnership capital consisted of cash and real and personal property having a value of \$138,241.61, which capital was contributed by the partners in equal amounts. The interests of the husband and wife were community property and it retained that character. There has been no attempt on the part of the husband and wife to convert the wife's or the husband's interests into separate property. The children borrowed the funds for their capital contributions from their father and gave him their respective promissory notes for such borrowed funds, which notes have been paid by the children in full with interest.

(d) The present partnership was the successor to several previous partnerships, the first of which was started in 1923, under the same name, to-wit, United Packing Co. The succeeding partnerships have engaged in similar businesses uninterrupted since the organization of the first partnership. The petitioner was a partner in each of the respective

partnerships, and in which partnerships persons other than members of the petitioner's family were members.

(e) At the time the said partnership agreement, (Exhibit "B" attached hereto) was entered into, Harriet Harkness Colgate was married to William H. Colgate, Jr. He and Floyd James Harkness, Jr. were both in the armed forces of the United States. Floyd James Harkness, Jr. entered the United States armed forces on January 12, 1942, and was discharged therefrom on January 6, 1946. William H. Colgate, Jr. entered the United States armed forces in 1941, and was discharged therefrom in September, 1944.

Under the terms of the partnership agreement and subsequent agreement between the parties, it was contemplated and agreed that Floyd James Harkness, Jr. and William H. Colgate, Jr., the husband of Harriet Harkness Colgate, would actively engage in the business of the partnership as soon as they were able to do so. Both of them had been trained for this purpose. William H. Colgate, Jr. was to represent his wife in the partnership, the wife's interest in the partnership as well as the profits arising from the interest being community property under the community property laws of the State of California, and accordingly the said William H. Colgate, Jr. had a vested interest in both the profits and capital of the partnership.

At the time the Articles of Copartnership were entered into, it was agreed and realized that a major portion of the work of the partnership would have to



be performed by the petitioner herein, until Floyd James Harkness, Jr., and William H. Colgate, Jr., were discharged from the armed forces and were able to actively take an interest in the partnership, and by reason of such fact there was a provision inserted in the Articles of Copartnership (Exhibit "B" attached hereto) to the effect that petitioner was to be the general manager of the partnership and was to devote such portion of his time towards the business of the partnership as he should deem necessary and proper for the business of the partnership; that he was to receive for his services a certain percentage of the net profits of the business to be agreed upon between the partners from time to time, and that the remaining income of the partnership should be divided equally between all the partners; that on January 4, 1943, a supplemental agreement was entered into between the partners, fixing this compensation as 75% of the net income from the said partnership, United Packing Co., up to the amount of \$100,000 which agreement stated that this compensation was being paid to him by reason of the fact that due to war conditions he was the only active copartner in the business of the partnership at that particular time. A copy of said agreement is attached hereto marked Exhibit "C" and made a part hereof.

(f) One of the principal assets of the partnership was an undivided interest in a 300-acre vineyard and orchard which was acquired on February 8, 1943. The title to said vineyard and orchard was vested as follows:

1/8 undivided interest in Floyd J. Harkness, Sr., taxpayer;

1/8 undivided interest in Molly A. Harkness, petitioner's wife;

1/8 undivided interest in Floyd James Harkness, Jr. and his wife;

1/8 undivided interest in Harriet Harkness Colgate and William H. Colgate, Jr., her husband.

The other 1/2 interest in said property was owned by Chris A. Sorensen (a former partner of United Packing Co.) and his wife.

One-half of the profits from the operation of the vineyard and orchard inured to the benefit of the partnership and was reported as such in the partnership income tax return. This one-half of the profits for the year 1943 amounted to the sum of \$60,309.92, all of which profits were re-allocated by the respondent to petitioner and his wife, Molly A. Harkness, instead of having been apportioned among the owners of said property on a partnership basis as reported in the income tax returns of the partnership and the respective income tax returns of the partners.

(g) In September, 1944, said William H. Colgate, Jr. received a medical discharge from the United States Army, and he thereafter immediately entered the services of the United Packing Co., and has devoted his entire time and attention since said date to the business and interests of the said United Packing Co.

(h) On January 6, 1946, Floyd James Harkness, Jr. was discharged from the United States Army,

and he thereafter immediately entered the services of the United Packing Co., and has devoted his entire time and attention since said date to the business and interests of the said United Packing Co.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that the respondent erred in re-allocating the income of the partnership known as United Packing Co., and in such re-allocation, re-allocating to the petitioner and the petitioner's wife, Molly A. Harkness, on a community property basis the entire income from said partnership, thus increasing the taxable income of the petitioner by the sum of \$71,770.50, and that this Court should determine that the correct amount of the petitioner's income tax and victory tax liability for the said year be re-computed in accordance with Rule 50.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ LeROY H. GUNTHER,

Counsel for Petitioner.

State of California,  
County of Fresno—ss.

Floyd J. Harkness, being first duly sworn, deposes and says:

That he is the petitioner above named; that he has read the foregoing Petition and is familiar with the statements contained therein, and that the statements contained therein are true except those stated

to be upon information and belief, and that those he believes to be true.

/s/ FLOYD J. HARKNESS.

Subscribed and sworn to before me this 29th day of October, 1947.

[Seal]      /s/ HARRY R. BRADLEY,  
Notary Public in and for the County of Fresno,  
State of California.

[Exhibit A attached to Petition is identical to Exhibit A attached to the Petition in Transcript No. 12681 and is set out in full at pages 9 to 14.]

[Exhibit B attached to the Petition is identical to Exhibit B attached to the Petition in Transcript No. 12681 and is set out in full at pages 14 to 26.]

[Exhibit C attached to the Petition is identical to Exhibit C attached to the Petition in Transcript No. 12681 and is set out in full at pages 26 to 28.]

Filed T.C.U.S. November 10, 1947.



[Title of Tax Court and Cause.]

### ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 and 4(a) to (e), inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraphs (a) to (e), inclusive, thereunder.

5(a). Denies the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b). Admits the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition.

5(e). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

(f), (g) and (h). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs (f), (g) and (h) of paragraph 5 of the petition.



6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;

T. M. MATHER,  
Special Attorney, Bureau  
Of Internal Revenue.

Received and Filed, T. C. U. S., December 16,  
1947.

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[Title of Tax Court and Cause.]

## COMPUTATION FOR ENTRY OF DECISION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and submits the attached computation of the deficiency under the opinion of The Tax Court of the United States promulgated December 22, 1949, in the above-entitled appeal.

The respondent's computation is submitted in accordance with Rule 50 of the Tax Court's Rules of

Practice and is without prejudice to his right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;

T. M. MATHER,  
Special Attorney,  
Bureau of Internal Revenue.

C:TS:PD

SF:TMM:BSF:Recomputation

Audit Statement

In re: Floyd J. Harkness  
3767 Huntington Boulevard  
Fresno, California

Docket No. 16408

Deficiency letter, dated August 21, 1947

Income and Victory Tax

| Year | Deficiency  |
|------|-------------|
| 1943 | \$65,252.27 |

Recomputation of tax liability prepared in accordance with the memorandum opinion of The Tax Court of the United States promulgated December 22, 1949.

Floyd J. Harkness

Recomputation Statement

Year: 1943

Schedule 1

Adjustments to Net Income

|   | Income Tax<br>Net Income | Victory Tax<br>Net Income |
|---|--------------------------|---------------------------|
| Net income as shown in deficiency notice<br>dated August 21, 1947 ..... | \$180,137.54             | \$186,520.93              |
| Net income, adjusted .....  | 180,012.54               | 186,395.93                |
| Adjustment .....  | \$ 125.00                | \$ 125.00                 |
| Nontaxable income:  |                          |                           |
| Business income .....   | \$ 125.00                | \$ 125.00                 |

Schedule 2

Explanation of Adjustment

The net profit of United Packing Company for the year 1943 is determined to be \$361,582.00 as shown in the stipulation of facts instead of \$361,832.00 as shown in the deficiency notice. Adjustment of this discrepancy results in a net decrease in profits of \$250.00, of which petitioner's community-half is \$125.00.

Schedule 3

Computation of Tax

|  |               |
|--|---------------|
| Income tax net income, Schedule 1..... | \$180,012.54  |
| Less: Personal exemption .....         | \$ 100.00     |
| Credit for dependent .....             | 350.00 450.00 |
| Surtax net income .....                | \$179,562.54  |
| Less: Earned income credit .....       | 1,400.00      |
| Balance subject to normal tax .....    | \$178,162.54  |
| Normal tax at 6% on \$178,162.54.....  | \$ 10,689.75  |
| Surtax on \$179,562.54.....            | 122,585.66    |
| Total income tax .....                 | \$133,275.41  |

## Schedule 3—(Continued)

|   |              |
|---|--------------|
| Total income tax (brought forward) .....                              | \$133,275.41 |
| Victory tax net income .....  | \$186,395.93 |
| Less: Specific exemption .....  | 624.00       |
| Income subject to victory tax .....                                   | \$185,771.93 |
| Victory tax at 5% .....   | \$ 9,288.60  |
| Less: Victory tax credit .....  | 600.00       |
| Net victory tax .....   | 8,688.60     |
| Income and victory tax .....  | \$141,964.01 |
| Income tax for 1942 as shown in deficiency<br>notice, unchanged ..... | \$ 36,936.99 |
| Income and victory tax liability (greater amount).....                | \$141,964.01 |
| Forgiveness feature:  |              |
| Income tax, 1942 .....  | \$ 36,936.99 |
| Less: Amount forgiven ( $\frac{3}{4}$ ) .....                         | 27,702.74    |
| Amount unforgiven .....   | 9,234.25     |
| Total income and victory tax .....                                    | \$151,198.26 |
| Income and victory tax shown on return                                |              |
| Original, Account No. 359237, First<br>California District .....      | 85,945.99    |
| Deficiency .....  | \$ 65,252.27 |

Filed T.C.U.S. January 17, 1950.

The Tax Court of the United States  
Washington

Docket No. 16408

FLOYD J. HARKNESS,  
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated December 22, 1949, the respondent herein filed a recomputation of tax on January 17, 1950. At the hearing on respondent's recomputation of tax held February 15, 1950, the petitioner did not appear. No objection has been filed to respondent's recomputation. It appearing that such recomputation is correct, it is, therefore, in accordance therewith,

Ordered and Decided: That there is a deficiency in income and victory tax for the year 1943 in the amount of \$65,252.27.

Entered Feb. 15, 1950.

[Seal]:       /s/ SAMUEL B. HILL,  
Judge.

Served Feb. 16, 1950.



[Title of Tax Court and Cause.]

PETITION OF FLOYD J. HARKNESS FOR  
REVIEW BY THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT OF A DECISION BY THE TAX  
COURT OF THE UNITED STATES

The taxpayer, Floyd J. Harkness, petitioner in this cause, by Philip S. Ehrlich, R. J. Hecht and Albert A. Axelrod, counsel for petitioner, hereby files his petition for review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States promulgated December 22, 1949, 13 T. C. No. 129, determining deficiencies in income and victory taxes of the petitioner for the calendar year 1943, which deficiencies against the petitioner Floyd J. Harkness, was in the sum of \$65,252.27, which deficiencies were determined by the Tax Court on February 15, 1950; and said petitioner respectfully shows:

I.

The petitioner resides, and at all the times mentioned in said petition resided, in the City of Fresno, County of Fresno, State of California. He filed his separate income tax return for the calendar year 1943 with the Collector of Internal Revenue for the 1st District of California at San Francisco, California.

II.

Nature of the Controversy

The controversy involves the proper determina-

tion of the petitioner's liability for Federal Income and Victory Taxes for the calendar year 1943. The determination of the deficiency against the petitioner arose by reason of the inclusion by the respondent in the petitioner's taxable income for the taxable year 1943, on a community property basis, of all the income from the operation of a partnership composed of the petitioner, Floyd J. Harkness, his wife, Molly A. Harkness, the petitioner's son, Floyd J. Harkness, Jr., and the petitioner's daughter, Harriet Harkness Colgate. This partnership does business under the firm name and style of United Packing Co. During the taxable year in question, each of the persons above named owned a 25% interest in the partnership.

In connection with the controversy the Tax Court found, in part, as follows:

"Petitioners, Floyd J. Harkness and Molly A. Harkness, are individuals residing in Fresno, California. They filed their separate income tax returns for 1943 with the Collector of Internal Revenue for the First District of California. Petitioners were married July 14, 1915, and have made their home in California ever since. They have two children, Floyd J. Harkness, Jr., and Harriet Harkness Colgate, born in 1918 and 1920, respectively.

Harkness, Sr. has been a grower and shipper of fruits and vegetables since 1918. Prior to 1937 he engaged in this occupation first as an employee of various concerns and then as a member of two successive partnerships operating under the name of United Packing Co. In January 1937, petitioner

bought out his partner and commenced operating the business as a sole proprietorship under the same name. Molly Harkness, as his wife, owned the assets of the business in community with him. The company specialized in packing and shipping cantaloupes, carrots, peaches, plums, nectarines and grapes. Some commodities were raised by the company itself while others were bought from farmers on a cash basis. Still other produce was packed and shipped by the company on a commission basis. For the purposes of its business, United Packing Co. operated ranches and packing houses, and manufactured and stocked packing materials. Its main office was located in Fresno, but its operations covered a large area in the San Joaquin Valley extending northward 138 miles to Lodi and southward 127 miles to Arvin. At the close of 1942 the gross proceeds and net income earned by United Packing Co. amounted to \$1,468,119.64 and \$141,790.95, respectively.

During the years up to 1942 petitioners' two children were occupied primarily in obtaining an education, though each performed some service in their father's business. Harkness, Jr. attended schools until June, 1941 when he graduated from college with a major in commerce. From 1934 until 1941 he worked in his father's business during summer vacations and in 1937 he quit school for six months to help his father launch the sole proprietorship. From June, 1941 until January, 1942 he devoted his full time as an employee of United Packing Co. working as a 'regular field man' at a salary of



\$150 per month plus a five per cent bonus of approximately \$910. During this six-months' period he also earned four to five thousand dollars in independent deals in the fruit and vegetable business. On January 12, 1942, he entered the United States Air Corps as a private. At the close of 1942 petitioners' son still had a credit on the books of the sole proprietorship of \$1,412.05 for prior services performed. He owned no substantial property outside of these earnings at that time.

Harriet Harkness finished her schooling in June, 1942 when she graduated from college. During summer vacations she had occasionally performed secretarial services in her father's business. Harriet worked full time as a secretary at United Packing Co. from June until August, 1942 at which time she married William H. Colgate, Jr., who was then serving in the United States Army. Following her marriage she spent her time housekeeping for her husband at various military posts in the United States until October, 1944. She owned no significant amount of property at the time of her marriage.

Harriet's husband, William Colgate, had resided in Fresno County, California, all his youth and had been an acquaintance of the Harkness family for a number of years prior to his marriage in 1942. He attended college, majoring in commerce, and during summer vacations was employed by Peerless Pump Company, the largest supplier of irrigation pumps in the San Joaquin Valley. Colgate later quit school and worked full time for this company

for nine months before enlisting in the United States Army in March, 1941. This was in keeping with his desire to devote his career to agricultural pursuits in the Valley. As an assistant foreman aiding in the installation of extensive irrigation systems, Colgate acquired considerable knowledge of the mechanics of irrigation. After his marriage to Harriet, they were stationed at Columbus, Ohio, during the latter part of 1942 and throughout 1943.

In the fall of 1942 Harkness, Sr. became convinced that it would be advantageous to convert the operation of his fruit packing and shipping business from a sole proprietorship to a partnership composed of his wife, himself and his two children in the coming year. Many reasons dictated that decision. Primarily he desired to obtain the services of his son and son-in-law in the business. He felt that as a result of their college education and the practical experience they had gained pursuing agricultural employment in the Valley that they would make skilled, competent supervisors capable of overseeing the widespread operations of the company. Secondly, from his experience in the fruit and vegetable packing industry, Harkness believed that it was essential to increase the capital investment in the company by allowing annual profits to remain in the business. This was necessary not only to permit payment of extensive operating expenses, to allow for expansion of company facilities and equipment and to develop new business, but also to meet the exigencies of bad crop years when the com-

pany's income declined drastically. Furthermore, in 1942 fruit packers were anticipating a decline in profits due to labor shortages, low transportation priorities for their produce, and the probability that prices would tumble as in World War I. These circumstances only increased the need for increasing the capital reserve of United Packing Co. Yet it had been Harkness' experience in past years that to hold qualified supervisory personnel it was necessary to pay them large bonuses or percentages of profits which they invariably withdrew from the business and often used to set themselves up in competition with him, thus draining the company's capital. He felt the only way to retain profits in the company was to bring into the business persons who felt as he did. Through long discussions with Harkness, Jr. and William Colgate, petitioner knew that they agreed with him that only a reasonable amount of the profits should be withdrawn from United Packing Co. and the rest of the net income should be allowed to accumulate in the business.

While Harkness, Sr. was well aware that neither Floyd, Jr., nor William Colgate would be available to serve United Packing Co. for the duration of the war and he would be the only active partner in the meantime, yet he desired them to acquire an interest in the company at this time to guarantee their future help in running the business after their release from the Army.

Furthermore, formation of the partnership accorded with the wish of Harkness, Sr. to give his children an opportunity to make good. Even when



Floyd, Jr. was a boy he and his father planned for the day when the former would be a full-fledged partner. After graduation from college in 1941 Harkness, Jr. had pressed his father to give him the status of a partner in the business, and while Harkness, Sr. had too many financial commitments to do so in that year, yet he promised his son he would make provision for him to purchase an interest in the business. Now petitioner desired to fulfill that promise. It was long understood that if one child was given an opportunity to participate in the business, the other would be given an equal opportunity. Offering Harriet an opportunity to become a partner in his business not only fulfilled this pledge, but was a long step toward securing the eventual services of her husband which petitioner so greatly desired.

While Harkness, Sr. consulted a lawyer concerning the feasibility of converting his business into a partnership and was thus aware of the tax saving possibilities inherent therein, yet this fact was only a secondary consideration with him, and he would have entered into this arrangement regardless thereof.

During the fall of 1942 Harkness, Sr. held lengthy conversations with his son, who was stationed at a nearby airfield, regarding the proposed partnership. Harkness, Jr. eagerly accepted the chance to buy an interest in United Packing Co. for this had been his great desire for many years and assured him of full participation in the business on his re-

turn from the service. Petitioners and young Harkness then definitely planned to convert the business into a partnership starting in 1943.

Over the same period of time Harkness, Sr. also corresponded with his daughter and offered her either the opportunity to invest in United Packing Co. or some other enterprise. Furthermore, it was understood that if she decided to come into her father's business, her husband, William Colgate, would be allowed to participate in the partnership following his release from the Army. Harriet and William Colgate debated at length whether it was advisable for her to buy an interest in her father's business or invest elsewhere. Finally Harriet exercised her option to procure an interest in United Packing Co. after her husband determined he wanted to be associated with United Packing Co. upon his return from the service.

Thus by November, 1942 petitioners and both their children generally agreed to the formation of a partnership for the operation of United Packing Co. in the coming year, though the details of the partnership relationship had not been worked out. A "Certificate of Co-Partnership Transacting Business under Fictitious Name" was executed on November 12, 1942, which petitioners and young Harkness signed on that date and Harriet signed on November 28. It stated that the four were co-partners carrying on business under the name of United Packing Co. and that Harkness, Sr., was the general manager in full charge of all business operations. This certificate was published in a

local paper and later filed with the County Recorder of Fresno County.

On December 31, 1942, "Articles of Partnership," providing the detailed terms of the proposed partnership, were drafted and met the approval of all but Harriet Colgate, who refused to sign until provisions as to control of the business and as to purchase of a deceased partner's share were modified.

On January 1, 1943, petitioners transferred to United Packing Co., a partnership, most of the assets and some of the liabilities of United Packing Co., sole proprietorship, existing on December 31, 1942, resulting in a net worth of \$138,241.61 for the partnership on that date. Harkness, Jr. and Harriet Colgate each bought a one-fourth interest in the partnership for \$34,560.41, equivalent to one-fourth of its net worth. To pay Harkness, Sr. for his share in the partnership the son used \$1,392.05 of the credit he had earned as compensation for prior services rendered the sole proprietorship and on January 2, 1943, signed a promissory note for the remaining \$33,168.35 with interest at four per cent per annum. Harriet Colgate purchased her partnership interest from her father with a promissory note dated January 2, 1943, for \$34,560.40 plus four per cent interest per annum. William Colgate joined her on the note as co-maker. No collateral was required on either note.

These transactions were reflected on the books of United Packing Co., co-partnership, as of January 1, 1943. It showed assets of \$142,861.03 and



liabilities of \$4,619.92 and a net worth of \$138,241.61. Capital of the partnership was stated to be \$138,241.61 resulting from contributions of \$34,560.41 each from the three Harknesses and Harriet Colgate.

On January 4, 1943, pending acceptance by Harriet Colgate of the articles of partnership drafted on December 31, 1942, Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate signed a supplemental agreement fixing compensation and distribution of partnership profits among the partners. The salary of Harkness, Sr., as general manager of the partnership, was fixed at 75 per cent of the first \$100,000 of the partnership net income. There was no provision for salaries for the other partners. The remainder of the first \$100,000 of partnership net income was to be divided equally among the partners, as were any profits over that amount.

\* \* \*

During January, 1943, Harkness, Sr. discussed with the Colgates the modifications sought by Harriet Colgate in the partnership agreement drafted on December 31, 1942. Harriet withdrew her objections when the original draft was altered to meet her demands. The reformed partnership agreement was signed by the three Harknesses on February 27, 1943, and by Harriet Colgate on March 10, 1943.

\* \* \*

In February, 1943, an undivided one-half interest

in a 300-acre vineyard and orchard was acquired by Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate as tenants in common. The other half interest in the ranch was acquired by Chris Sorenson and his wife. Sorenson was a supervisory employee of United Packing Co. All funds for purchase of the vineyard were supplied by United Packing Co. and the amount loaned to Sorenson was repaid to the company by him. The 50 per cent interest acquired by the Harknesses and Harriet Colgate was included as an asset of United Packing Co. and subsequent income therefrom was included in its net income. Previously on January 16, 1943, by a bill of sale the personal property on the River Ranch had been conveyed to Chris A. Sorenson and Katharine Sorenson, his wife, and "Floyd J. Harkness, Molly A. Harkness, Harriet Harkness Colgate and Floyd J. Harkness, Jr., co-partners, doing business under the firm name and style of United Packing Co., a co-partnership." Prior to these purchases, all the partners were consulted with respect to them, and Harkness, Jr., who was familiar with the land, approved the transactions.

During the year 1943 there was no change in the operation of United Packing Co. over prior years. The business was still completely under the control of Harkness, Sr. Harriet and William Colgate were absent from Fresno until his discharge from the armed services in October 1944, so consequently she performed no services for United Packing Co. during the year 1943 nor did she participate in the



management of its affairs. Throughout the year 1943 until December, Harkness, Jr. was stationed at Hamilton Field, California, approximately six hours traveling time from Fresno, and frequently visited the company's office and packing plants on weekends. While he was unable to participate in the business activities, yet he discussed its problems with his father on these occasions. In December, 1943 Harkness, Jr. went overseas with the Air Corps and did not return to Fresno until January, 1946.

In 1943 United Packing Co. earned gross proceeds of \$2,572,905.53 and a net income of \$361,582. In accordance with the terms of the supplemental agreement Harkness, Sr. was paid a salary of \$75,000 and Harkness, Sr., Molly Harkness, Harkness, Jr. and Harriet Colgate each were credited with \$71,645.50 as their respective shares of the profits.

Harriet's credit on the partnership books was first applied to pay off the principal and interest on her promissory note to Harkness, Sr., in the amount of \$35,942.82, and to offset prior withdrawals from her capital account consisting of cash in the amount of \$112.97 and sums of \$1,070.89 and \$31,423.67 paid to the Collector of Internal Revenue. The balance of \$3,095.15 which she left in the business at the close of 1943 was withdrawn in 1944 to pay for taxes and personal expenditures. Of the \$71,645.50 credited to Harkness, Jr., \$34,495.08 was turned over to his father to pay the principal and interest on his promissory note. Of the remaining \$37,150.42 which he left in the business in 1943, young

Harkness expended \$331.58 for his own use in 1944.

United Packing Co. filed a partnership return for the year 1943, reporting a net income of \$361,582, compensation of \$75,000 paid to Harkness, Sr., and the distribution of \$71,645.50 from profits to each of the three Harknesses and to Harriet Colgate.

Harkness, Sr. and Molly Harkness filed separate income tax returns in 1943. As residents of a community property state, each reported one-half of the total income of \$218,291 they together received from United Packing Co. in 1943, or \$109,145.50.

In his notices of deficiency sent to petitioners, respondent determined that the net income of United Packing Co. for 1943 was \$361,823 and that each petitioner realized one-half of this amount, or \$180,916, as community property income. The notice of deficiency sent to Harkness, Sr. stated in part:

“(a) On December 31, 1942, you and your wife, Molly A. Harkness, together with your two children, Floyd James Harkness, Jr. and Harriet Harkness Colgate, executed an instrument purporting to create a family partnership. Since Floyd James Harkness, Jr. and Harriet Harkness Colgate contributed no capital originating with themselves, rendered no services to the business, and were not required to participate in the control and management of the business under the terms of the alleged partnership agreement, it is held that they did not acquire valid partnership interests in the United Packing Company. Accordingly, profits

from the above-named organization are reallocated to you and your wife on a community property basis, thus increasing your taxable income by \$71,770.50 as shown below.

|                                     |                |
|-------------------------------------|----------------|
| Total net profit of United Packing  |                |
| Company .....                       | \$361,832.00   |
| Your community one-half share ..... | 180,916.00     |
| Amount reported on return .....     | 109,145.50     |
| <hr/>                               |                |
| Adjustment—Increase .....           | \$ 71,770.50'' |

Similar language was contained in the notice of deficiency received by Molly Harkness.

The three Harknesses and Harriet Colgate had no intent to join together in conducting the business of United Packing Company as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year."

The Tax Court, in its opinion, held that the petitioner, his wife, and their children had no intent to join together in conducting the business of United Packing Co. as bona fide partners in 1943, and that their partnership was not valid for tax purposes in that year.

### III.

The said taxpayer, to wit, Floyd J. Harkness, being aggrieved by the Findings of Fact and Conclusions of Law contained in said Findings and Opinions of the Court and by the Tax Court's decisions entered pursuant thereto, desires to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.



## IV.

The petitioner assigns as error the following acts and omissions of the Tax Court of the United States:

1. The Tax Court erred in finding contrary to the record that:

“During the year 1943 there was no change in the operation of United Packing Co. over prior years. The business was still completely under the control of Harkness, Sr.”

2. The Tax Court erred in finding contrary to the record that no collateral was required to secure the notes given by Harriet Colgate and Floyd J. Harkness, Jr., to petitioner and his wife.

3. The Tax Court erred in finding contrary to the record as a whole that:

“The three Harknesses and Harriet Colgate had no intention to join together in conducting the business of United Packing Co. as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year.”

4. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., upon his return from the Army in January, 1946, was appointed Assistant General Manager of the partnership business, and has ever since that time, and up to January 11, 1949, the date of the hearing of this case, rendered substantial managerial services to the business.

5. The Tax Court erred in not finding, as the record shows, that during the year 1946 Floyd J. Harkness, Jr. received the sum of \$57,984.85, and during the year 1947 the sum of \$53,635.13, as salary for each of said years for services rendered as such Assistant General Manager.

6. The Tax Court erred in not finding, as the record shows, that during the period 1946 to 1947, Floyd J. Harkness, Jr. withdrew from the partnership business a total sum of \$121,484.51.

7. The Tax Court erred in not finding, as the record shows, that William Colgate was discharged from the Army in the Fall of 1944, and immediately went to work for the partnership, and in not finding that in January, 1945, William Colgate became a fifth partner in the enterprise.

8. The Tax Court erred in not finding, as the record shows, that William Colgate has ever since January, 1945, been the Manager of the Clovis-Sanger District of the partnership and has rendered substantial services of a supervisory and managerial nature to the partnership, and in not finding that he has received the following compensation for his services: 1944, \$450.00; 1945, \$5,275.00; 1946, \$46,554.79; 1947, \$35,928.45.

9. The Tax Court erred in not finding, as the record shows, that during the period 1944 to 1947, William Colgate and Harriet Colgate have withdrawn \$100,138.48 from the partnership.

10. The Tax Court erred in not finding, as the record shows, as a whole, that Floyd J. Harkness, Jr., and Harriet Colgate were and have been ever since January 1, 1943, the true owners of an undivided interest in the assets of the partnership.

11. The Tax Court erred in not finding, as the record shows as a whole, that Floyd J. Harkness, Jr. and William Colgate made, as of the date of the formation of the partnership, a commitment to render services to the partnership as soon as circumstances permitted.

12. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., Harriet Colgate and petitioner and his wife were co-owners, tenants in common, of one-half of the Ranch known as the "River Ranch," each owning an undivided  $\frac{1}{8}$  interest therein, and in not finding that during the year 1943 the profits derived from the operation of this Ranch amounted to \$60,309.92, and in not finding that the  $\frac{1}{8}$ th interest of each of the children yielded an income belonging to them in the sum of \$15,077.48 each.

13. The Tax Court erred in not finding, as the record shows, that Harriet Colgate and Floyd J. Harkness, Jr. pledged the first income to be derived from the business of the partnership to the payment of the notes given by them to petitioner and his wife.

14. The Tax Court erred in not finding, as the record shows, that petitioner and his wife and Har-

riet Colgate and Floyd J. Harkness, Jr., intended to join together in conducting the business of United Packing Co. as bona fide partners in 1945 and that their partnership was valid for tax purposes for that year.

15. The Tax Court erred in that its decision herein is contrary to the applicable decisions of the Supreme Court of the United States.

16. The Tax Court erred herein in that its decision is contrary to the applicable decisions of the Tax Court heretofore made.

17. The Tax Court erred in finding, contrary to the record, a deficiency for the year 1943, in lieu of a finding that there is no income tax due from the petitioner for said year.

Wherefore, petitioner prays for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the United States Tax Court, promulgated December 22, 1949, 13 T.C. No. 129; and that upon such review said Honorable Court make and enter a decree setting aside and reversing said decision of the United States Tax Court, and determine that the respondent, the Commissioner of Internal Revenue, erred in reallocating the income of the partnership known as United Packing Co. and in such reallocation reallocating to the petitioner, named Floyd J. Harkness, Sr., and to his wife, Molly A. Harkness, on a community property basis, the entire income from said partnership; and should further determine that there was no de-



ficiency in income taxes or victory taxes for the year 1943 from said petitioner.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Counsel for Petitioner.

State of California,

City and County of San Francisco—ss.

Albert A. Axelrod and R. J. Hecht, being first duly sworn, depose and say:

That they are counsel of record in the above-entitled cause; that as such counsel they are authorized to verify the foregoing petition for review, that they have read said petition and are familiar with the statements contained therein; that the statements made are true to the best of each of their knowledge, information and belief.

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT.

Subscribed and sworn to before me this 10th day of May 1950.

[Seal] /s/ GLADYS C. OKERSTROM,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires October 27, 1952.

Received and Filed, T.C.U.S., May 12, 1950.



In the United States Court of Appeals  
For the Ninth Circuit

Docket No. 16408

FLOYD J. HARKNESS,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent on Review.

NOTICE OF FILING PETITION  
FOR REVIEW

To: Charles Oliphant,  
Chief Counsel,  
Bureau of Internal Revenue.

You are hereby notified that the above-petitioner did, on the 12th day of May, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 16th day of May, 1950.

/s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the  
United States.

Service of Copy of Petition for Review Acknowledged this 16th day of May, 1950.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Filed T.C.U.S. May 16, 1950.

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In the Tax Court of the United States  
No. 16408

FLOYD J. HARKNESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PRAECIPE FOR RECORD

To the Clerk of the Tax Court of the United States:

You are hereby respectfully requested to prepare and certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to Petition for Review heretofore filed by the petitioner in the above-entitled cause, a transcript of record in the above cause prepared and transmitted as required by law and by the rules of said court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before the Tax Court.

2. Pleadings before the Tax Court of the United States as follows:

(a) Petition for redetermination.

(b) Answer of respondent.

3. Stipulation of facts filed at the hearing January 11, 1949.

4. Reporter's transcript of the proceedings and testimony before the Tax Court on January 11, 1949.

5. The following exhibits introduced in evidence before the Tax Court on January 11, 1949:

(a) Joint exhibits: 10-J, 11-K, 12-L.

(b) Petitioner's exhibits: 13, 14, 15, 16, 17, 18.

(c) Respondent's exhibits M, N.

6. Notice under Rule 50.

7. Respondent's computation for entry of decision.

8. Stipulation signed by counsel for petitioner with respect to the computation of respondent.

9. Decision of the Tax Court.

10. Petition for Review filed by petitioner.

11. This praecipe.

12. Notice of Filing Petition for Review.

Dated: July 10, 1950.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Attorneys for Petitioner,  
Floyd J. Harkness.

Affidavit of Service by Mail attached.

Received and Filed, T.C.U.S., July 12, 1950.

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[Title of Tax Court and Cause.]

### CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 3, inclusive, constitute and are all of the original papers and proceedings on file in my office with the exception of the original stenographic transcript of hearing and exhibits, which are incorporated in the related case Docket No. 16407, as called for by the "Praecipe for Record" in the proceeding before the Tax Court of the United States entitled: "Floyd J. Harkness, Respondent," Docket No. 16408, and in which the petitioner in the Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.



In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 14th day of April, 1950.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk.

The Tax Court of the United States

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[Endorsed]: No. 12619. United States Circuit Court of Appeals for the Ninth Circuit. Floyd J. Harkness, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record Upon Petition to Review a Decision of The Tax Court of the United States.

Filed July 19, 1950.

      /s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 12619

FLOYD J. HARKNESS,

Petitioner and Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent and Appellee.

APPLICATION FOR EXTENSION OF TIME  
WITHIN WHICH TO FILE RECORD AND  
DOCKET CASE ON A PETITION FOR  
REVIEW FROM A DECISION OF THE  
TAX COURT OF THE UNITED STATES

To the Honorable Justices of the United States  
Court of Appeals for the Ninth Circuit:

The above-named petitioner Floyd J. Harkness, through his counsel, hereby applies to this Honorable Court for an extension of time within which to file the record and docket his case after filing of the petition for review in the Tax Court of the United States.

This application is made on the ground of excusable neglect of one of counsel for said petitioner, in failing to file with the Clerk of the Tax Court of the United States a praecipe designating the record to be transmitted to the Clerk of this Honorable Court, within the forty-day period called for by Rule 31 of this Honorable Court.

This application is supported by the affidavit of R. J. Hecht, one of counsel for petitioner, and points and authorities likewise attached to this application.

Petitioner respectfully requests that he be granted a reasonable time within the discretion of the above-entitled court within which the Clerk of the Tax Court may file with the Clerk of this Honorable Court said record, and within which said case may be docketed.

Dated: July 7, 1950.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

/s/ R. J. HECHT,

Attorneys for Petitioner and Appellant Floyd J. Harkness.

Ordered time of petitioner to file transcript of record and docket cause extended to August 1, 1950.

/s/ WILLIAM HEALEY,

/s/ WM. E. ORR,

/s/ WALTER L. POPE,

U. S. Circuit Judges.

[Endorsed]: Filed July 8, 1950.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF

Appellant proposes, on his appeal, to rely on the following points:

1. The following ultimate finding of the Tax Court is contrary to its evidentiary findings:

“The three Harknesses and Harriet Colgate had no intent to join together in conducting the business of United Packing Co. as bona fide partners in 1943 and thus their partnership was not valid for tax purposes in that year.”

2. The ultimate finding set forth in 1 above is based upon a misapplication of the law.

3. The ultimate finding set forth in 1 above is clearly erroneous because it is against the clear weight of the evidence and is arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

4. The following finding of fact is clearly erroneous because it is against the clear weight of the evidence and is arrived at by accepting part of the evidence and totally disregarding other convincing evidence:

“During the year 1943 there was no change in the operation of United Packing Co. over



prior years. The business was still completely under the control of Harkness, Sr.”

5. The following ultimate finding of the Tax Court is contrary to its evidentiary findings:

“No collateral was required on either note.”

6. The ultimate finding set forth in 5 above is clearly erroneous because it is against the clear weight of the evidence.

7. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., upon his return from the Army in January, 1946, was appointed Assistant General Manager of the partnership business, and has ever since that time, and up to January 11, 1949, the date of the hearing of this case, rendered substantial managerial services to the business.

8. The Tax Court erred in not finding, as the record shows, that during the year 1946 Floyd J. Harkness, Jr. received the sum of \$57,984.85, and during the year 1947 the sum of \$53,635.13, as salary for each of said years for services rendered as such Assistant General Manager.

9. The Tax Court erred in not finding, as the record shows, that during the period 1946 to 1947 Floyd J. Harkness, Jr. withdrew from the partnership business a total sum of \$121,484.51.

10. The Tax Court erred in not finding, as the record shows, that William Colgate was discharged from the Army in the Fall of 1944, and immediately went to work for the partnership, and in not finding

that in January, 1945, William Colgate became a fifth partner in the enterprise.

11. The Tax Court erred in not finding, as the record shows, that William Colgate has ever since January, 1945, been the Manager of the Clovis-Sanger District of the partnership and has rendered substantial services of a supervisory and managerial nature to the partnership, and in not finding that he has received the following compensation for his services: 1944, \$450.00; 1945, \$5,275.00; 1946, \$46,554.79; 1947, \$35,928.45.

12. The Tax Court erred in not finding, as the record shows, that during the period 1944 to 1947 William Colgate and Harriet Colgate have withdrawn \$100,138.48 from the partnership.

13. The Tax Court erred in not finding, as the record shows, as a whole, that Floyd J. Harkness, Jr. and Harriet Colgate were and have been ever since January 1, 1943, the true owners of an undivided interest in the assets of the partnership.

14. The Tax Court erred in not finding, as the record shows as a whole, that Floyd J. Harkness, Jr. and William Colgate made, as of the date of the formation of the partnership, a commitment to render services to the partnership as soon as circumstances permitted.

15. The Tax Court erred in not finding, as the record shows, that Floyd J. Harkness, Jr., Harriet Colgate, and appellant and his wife, Molly A. Harkness, were co-owners, as tenants in common, of one-half of the Ranch known as the "River Ranch", each owning an undivided  $\frac{1}{8}$ th interest therein, and

in not finding that during the year 1943 the profits derived from the operation of this Ranch amounted to \$60,309.92, and in not finding that the 1/8th interest of each of the children yielded an income belonging to them in the sum of \$15,077.48 each.

16. The Tax Court erred in not finding, as the record shows, that Harriet Colgate and Floyd J. Harkness, Jr. pledged the first income to be derived from the business of the partnership to the payment of the notes given by them to appellant and his wife.

17. The Tax Court erred in not finding, as the record shows, that appellant and his wife and Harriet Colgate and Floyd J. Harkness, Jr. intended to join together in conducting the business of United Packing Co. as bona fide partners in 1945 and that their partnership was valid for tax purposes for that year.

18. The Tax Court erred in that its decision herein is contrary to the applicable decisions of the Supreme Court of the United States. (Commissioner of Internal Revenue v. Culbertson, 337 U.S. 733; Commissioner of Internal Revenue v. Tower, 327 U.S. 280).

19. The Tax Court erred herein in that its decision is contrary to the applicable decisions of the Tax Court heretofore made. (Isaac Blumberg, 11 T.C. 663).

20. The Tax Court erred in finding, contrary to the record, a deficiency for the year 1943, in lieu of a finding that there is no income tax due from appellant for said year.

Appellant designates the following portions of the record as necessary for the consideration of the foregoing points:

- (a) The petition of Floyd J. Harkness.
- (b) Answer of Commissioner of Internal Revenue.
- (c) Respondent Commissioner's petition for entry of decision.
- (d) Decision.
- (e) Petition for review.
- (f) Proof of service of petition for review.
- (g) Application and order re extension of time to transmit record. (Please omit affidavit in support of application and points and authorities).
- (h) Praecipe for record.
- (i) Certificate of Clerk of Tax Court of the United States.
- (j) This statement of points on which appellant intends to rely and designation of parts of the record necessary for consideration thereof.

Dated at San Francisco, California, July 24, 1950.

/s/ PHILIP S. EHRLICH,  
/s/ ALBERT A. AXELROD,  
/s/ R. J. HECHT,

Attorneys for appellant  
Floyd J. Harkness

[Endorsed]: Filed July 25, 1950.



[Title of Court of Appeals and Cause.]

STIPULATION FOR CONSOLIDATION ON  
PETITION FOR REVIEW

It Is Hereby Stipulated by and between the parties, through their respective counsel, that the above-entitled cause be consolidated with the case of Molly A. Harkness, Petitioner, vs. Commissioner of Internal Revenue, Respondent, No. 12618, and that for the purposes of said consolidated petitions the parties will rely upon the record in the Molly A. Harkness, Petitioner, vs. Commissioner of Internal Revenue, Respondent, No. 12618.

It Is Likewise Stipulated by and between the parties, through their respective counsel, that the petitions for review in this cause, and in the cause of Molly A. Harkness, Petitioner, vs. Commissioner of Internal Revenue, Respondent, No. 12618, be consolidated for the purposes of brief, argument and opinion.

Dated: August 11, 1950.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

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Charles Oliphant,  
Attorneys for Respondent.

/s/ PHILIP S. EHRLICH,  
/s/ ALBERT A. AXELROD,  
/s/ R. J. HECHT,  
Attorneys for Petitioner.

It Is Ordered: That the above causes be consolidated for brief and argument.

/s/ WILLIAM DENMAN,  
Judge of the United States  
Court of Appeals.

/s/ CLIFTON MATHEWS,

/s/ WILLIAM HEALY,  
Judges, U. S. Court of  
Appeals for the 9th Circuit.

[Endorsed]: Filed August 17, 1950.